

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the First Amended
Accusation Against:**

Richard Alan Berg, M.D.

Case No. 800-2014-010483

**Physician's and Surgeon's
Certificate No. G 53552**

Respondent

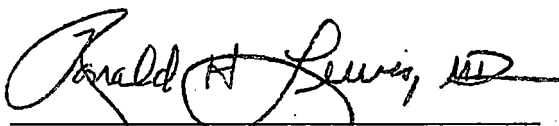
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 22, 2019.

IT IS SO ORDERED: January 24, 2019.

MEDICAL BOARD OF CALIFORNIA



**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 STEVE DIEHL
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California Department of Justice
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation
Against:

13 **RICHARD ALAN BERG, M.D.**
5882 Birkdale Ln.
14 San Luis Obispo, CA 93401

15 **Physician's and Surgeon's Certificate No. G**
53552

16 Respondent.

Case No. 800-2014-010483

17 **STIPULATED SETTLEMENT AND**
DISCIPLINARY ORDER

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Steve Diehl,
24 Deputy Attorney General.

25 2. Respondent Richard Alan Berg, M.D. (Respondent) is represented in this proceeding
26 by attorney Mark Connely, whose address is: Hall Heatt & Connely, LLP, 1319 Marsh St. Fl. 2,
27 San Luis Obispo, CA 93401-3315.

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3. On or about September 10, 1984, the Board issued Physician's and Surgeon's Certificate No. G 53552 to Richard Alan Berg, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2014-010483, and will expire on April 30, 2020, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2014-010483 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on May 22, 2018. This Stipulation shall serve as Respondent's Notice of Defense.

5. A copy of First Amended Accusation No. 800-2014-010483 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2014-010483. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in First Amended
3 Accusation No. 800-2014-010483, if proven at a hearing, constitute cause for imposing discipline
4 upon his Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges. Respondent agrees that if he ever petitions for early termination or modification of
9 probation, or if the Board ever petitions for revocation of probation, all of the charges and
10 allegations contained in Accusation No. 800-2014-010483 shall be deemed true, correct and fully
11 admitted by respondent for purposes of that proceeding or any other licensing proceeding
12 involving respondent in the State of California.

13 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
14 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
15 Disciplinary Order below.

16 CONTINGENCY

17 12. This stipulation shall be subject to approval by the Medical Board of California.
18 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
19 Board of California may communicate directly with the Board regarding this stipulation and
20 settlement, without notice to or participation by Respondent or his counsel. By signing the
21 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
22 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
23 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
24 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
25 action between the parties, and the Board shall not be disqualified from further action by having
26 considered this matter.

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1 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
2 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
3 signatures thereto, shall have the same force and effect as the originals.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 53552 issued
9 to Respondent Richard Alan Berg, M.D. is revoked. However, the revocation is stayed and
10 Respondent is placed on probation for five (5) years on the following terms and conditions.

11 1. **CONTROLLED SUBSTANCES - TOTAL RESTRICTION.** Respondent shall not
12 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in
13 the California Uniform Controlled Substances Act.

14 Respondent shall not issue an oral or written recommendation or approval to a patient or a
15 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
16 purposes of the patient within the meaning of Health and Safety Code section 11362.5.

17 If Respondent forms the medical opinion, after an appropriate prior examination and a
18 medical indication, that a patient's medical condition may benefit from the use of marijuana,
19 Respondent shall so inform the patient and shall refer the patient to another physician who,
20 following an appropriate prior examination and a medical indication, may independently issue a
21 medically appropriate recommendation or approval for the possession or cultivation of marijuana
22 for the personal medical purposes of the patient within the meaning of Health and Safety Code
23 section 11362.5. In addition, Respondent shall inform the patient or the patient's primary
24 caregiver that Respondent is prohibited from issuing a recommendation or approval for the
25 possession or cultivation of marijuana for the personal medical purposes of the patient and that
26 the patient or the patient's primary caregiver may not rely on Respondent's statements to legally
27 possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall
28 fully document in the patient's chart that the patient or the patient's primary caregiver was so

1 informed. Nothing in this condition prohibits Respondent from providing the patient or the
2 patient's primary caregiver information about the possible medical benefits resulting from the use
3 of marijuana.

4 2. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain
5 completely from the personal use or possession of controlled substances as defined in the
6 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
7 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
8 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
9 illness or condition.

10 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent
11 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone
12 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
13 telephone number.

14 3. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
15 use of products or beverages containing alcohol.

16 4. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective
17 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
18 advance by the Board or its designee. Respondent shall provide the approved course provider
19 with any information and documents that the approved course provider may deem pertinent.
20 Respondent shall participate in and successfully complete the classroom component of the course
21 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
22 complete any other component of the course within one (1) year of enrollment. The prescribing
23 practices course shall be at Respondent's expense and shall be in addition to the Continuing
24 Medical Education (CME) requirements for renewal of licensure.

25 A prescribing practices course taken after the acts that gave rise to the charges in the First
26 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
27 the Board or its designee, be accepted towards the fulfillment of this condition if the course would
28 have been approved by the Board or its designee had the course been taken after the effective date

1 of this Decision.

2 Respondent shall submit a certification of successful completion to the Board or its
3 designee not later than 15 calendar days after successfully completing the course, or not later than
4 15 calendar days after the effective date of the Decision, whichever is later.

5 5. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
6 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
7 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
8 Respondent shall participate in and successfully complete that program. Respondent shall
9 provide any information and documents that the program may deem pertinent. Respondent shall
10 successfully complete the classroom component of the program not later than six (6) months after
11 Respondent's initial enrollment, and the longitudinal component of the program not later than the
12 time specified by the program, but no later than one (1) year after attending the classroom
13 component. The professionalism program shall be at Respondent's expense and shall be in
14 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

15 A professionalism program taken after the acts that gave rise to the charges in the First
16 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
17 the Board or its designee, be accepted towards the fulfillment of this condition if the program
18 would have been approved by the Board or its designee had the program been taken after the
19 effective date of this Decision.

20 Respondent shall submit a certification of successful completion to the Board or its
21 designee not later than 15 calendar days after successfully completing the program or not later
22 than 15 calendar days after the effective date of the Decision, whichever is later.

23 6. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
24 Respondent shall submit to the Board or its designee for prior approval the name and
25 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
26 has a doctoral degree in psychology and at least five years of postgraduate experience in the
27 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
28 undergo and continue psychotherapy treatment, including any modifications to the frequency of

1 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

2 The psychotherapist shall consider any information provided by the Board or its designee
3 and any other information the psychotherapist deems relevant and shall furnish a written
4 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
5 psychotherapist with any information and documents that the psychotherapist may deem
6 pertinent.

7 Respondent shall have the treating psychotherapist submit quarterly status reports to the
8 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
9 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
10 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
11 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
12 period of probation shall be extended until the Board determines that Respondent is mentally fit
13 to resume the practice of medicine without restrictions.

14 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

15 7. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the
16 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board
17 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician
18 who shall consider any information provided by the Board or designee and any other information
19 the evaluating physician deems relevant and shall furnish a medical report to the Board or its
20 designee. Respondent shall provide the evaluating physician with any information and
21 documentation that the evaluating physician may deem pertinent.

22 Following the evaluation, Respondent shall comply with all restrictions or conditions
23 recommended by the evaluating physician within 15 calendar days after being notified by the
24 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
25 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the
26 Board or its designee for prior approval the name and qualifications of a California licensed
27 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent
28 shall within 15 calendar days undertake medical treatment and shall continue such treatment until

1 further notice from the Board or its designee.

2 The treating physician shall consider any information provided by the Board or its designee
3 or any other information the treating physician may deem pertinent prior to commencement of
4 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
5 its designee indicating whether or not the Respondent is capable of practicing medicine safely.
6 Respondent shall provide the Board or its designee with any and all medical records pertaining to
7 treatment that the Board or its designee deems necessary.

8 If, prior to the completion of probation, Respondent is found to be physically incapable of
9 resuming the practice of medicine without restrictions, the Board shall retain continuing
10 jurisdiction over Respondent's license and the period of probation shall be extended until the
11 Board determines that Respondent is physically capable of resuming the practice of medicine
12 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

13 Respondent shall not engage in the practice of medicine until notified in writing by the
14 Board or its designee of its determination that Respondent is medically fit to practice safely.

15 8. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
16 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
17 where: 1) Respondent merely shares office space with another physician but is not affiliated for
18 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
19 location.

20 If Respondent fails to establish a practice with another physician or secure employment in
21 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
22 Respondent shall receive a notification from the Board or its designee to cease the practice of
23 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
24 practice until an appropriate practice setting is established.

25 If, during the course of the probation, the Respondent's practice setting changes and the
26 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
27 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
28 If Respondent fails to establish a practice with another physician or secure employment in an

1 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
2 shall receive a notification from the Board or its designee to cease the practice of medicine within
3 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
4 appropriate practice setting is established.

5 9. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within thirty (30)
6 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as
7 may be required by the Board or its designee, Respondent shall undergo and complete a clinical
8 diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed
9 board certified physician and surgeon. The examiner shall consider any information provided by
10 the Board or its designee and any other information he or she deems relevant, and shall furnish a
11 written evaluation report to the Board or its designee.

12 The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon
13 who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of
14 physicians and surgeons with substance abuse disorders, and is approved by the Board or its
15 designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable
16 professional standards for conducting substance abuse clinical diagnostic evaluations. The
17 evaluator shall not have a current or former financial, personal, or business relationship with
18 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and
19 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the
20 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a
21 threat to himself or herself or others, and recommendations for substance abuse treatment,
22 practice restrictions, or other recommendations related to Respondent's rehabilitation and ability
23 to practice safely. If the evaluator determines during the evaluation process that Respondent is a
24 threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24)
25 hours of such a determination.

26 In formulating his or her opinion as to whether Respondent is safe to return to either part-
27 time or full-time practice and what restrictions or recommendations should be imposed, including
28 participation in an inpatient or outpatient treatment program, the evaluator shall consider the

1 following factors: Respondent's license type; Respondent's history; Respondent's documented
2 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);
3 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical
4 history and current medical condition; the nature, duration and severity of Respondent's
5 substance abuse problem or problems; and whether Respondent is a threat to himself or herself or
6 the public.

7 For all clinical diagnostic evaluations, a final written report shall be provided to the Board
8 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator
9 requests additional information or time to complete the evaluation and report, an extension may
10 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally
11 assigned the matter.

12 The Board shall review the clinical diagnostic evaluation report within five (5) business
13 days of receipt to determine whether Respondent is safe to return to either part-time or full-time
14 practice and what restrictions or recommendations shall be imposed on Respondent based on the
15 recommendations made by the evaluator. Respondent shall not be returned to practice until he or
16 she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating
17 that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited
18 substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of
19 Regulations.

20 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall
21 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic
22 evaluation, including any and all testing deemed necessary by the examiner, the Board or its
23 designee, shall be borne by the licensee.

24 Respondent shall not engage in the practice of medicine until notified by the Board or its
25 designee that he or she is fit to practice medicine safely. The period of time that Respondent is
26 not practicing medicine shall not be counted toward completion of the term of probation.
27 Respondent shall undergo biological fluid testing as required in this Decision at least two (2)
28 times per week while awaiting the notification from the Board if he or she is fit to practice

1 medicine safely.

2 Respondent shall comply with all restrictions or conditions recommended by the examiner
3 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified
4 by the Board or its designee.

5 10. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
6 days of the effective date of this Decision, Respondent shall provide to the Board the names,
7 physical addresses, mailing addresses, and telephone numbers of any and all employers and
8 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
9 worksite monitor, and Respondent's employers and supervisors to communicate regarding
10 Respondent's work status, performance, and monitoring.

11 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
12 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff
13 privileges.

14 11. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
15 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
16 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
17 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
18 make daily contact with the Board or its designee to determine whether biological fluid testing is
19 required. Respondent shall be tested on the date of the notification as directed by the Board or its
20 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
21 any time, including weekends and holidays. Except when testing on a specific date as ordered by
22 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
23 basis. The cost of biological fluid testing shall be borne by the Respondent.

24 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.
25 During the second year of probation and for the duration of the probationary term, up to five (5)
26 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no
27 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
28 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number

1 of random tests to the first-year level of frequency for any reason.

2 Prior to practicing medicine, Respondent shall contract with a laboratory or service,
3 approved in advance by the Board or its designee, that will conduct random, unannounced,
4 observed, biological fluid testing and meets all of the following standards:

5 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
6 Association or have completed the training required to serve as a collector for the United
7 States Department of Transportation.

8 (b) Its specimen collectors conform to the current United States Department of
9 Transportation Specimen Collection Guidelines.

10 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
11 by the United States Department of Transportation without regard to the type of test
12 administered.

13 (d) Its specimen collectors observe the collection of testing specimens.

14 (e) Its laboratories are certified and accredited by the United States Department of Health
15 and Human Services.

16 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
17 of receipt and all specimens collected shall be handled pursuant to chain of custody
18 procedures. The laboratory shall process and analyze the specimens and provide legally
19 defensible test results to the Board within seven (7) business days of receipt of the
20 specimen. The Board will be notified of non-negative results within one (1) business day
21 and will be notified of negative test results within seven (7) business days.

22 (g) Its testing locations possess all the materials, equipment, and technical expertise
23 necessary in order to test Respondent on any day of the week.

24 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
25 for the detection of alcohol and illegal and controlled substances.

26 (i) It maintains testing sites located throughout California.

27 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
28 computer database that allows the Respondent to check in daily for testing.

1 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
2 access to drug test results and compliance reporting information that is available 24 hours a
3 day.

4 (l) It employs or contracts with toxicologists that are licensed physicians and have
5 knowledge of substance abuse disorders and the appropriate medical training to interpret
6 and evaluate laboratory biological fluid test results, medical histories, and any other
7 information relevant to biomedical information.

8 (m) It will not consider a toxicology screen to be negative if a positive result is obtained
9 while practicing, even if the Respondent holds a valid prescription for the substance.

10 Prior to changing testing locations for any reason, including during vacation or other travel,
11 alternative testing locations must be approved by the Board and meet the requirements above.

12 The contract shall require that the laboratory directly notify the Board or its designee of
13 non-negative results within one (1) business day and negative test results within seven (7)
14 business days of the results becoming available. Respondent shall maintain this laboratory or
15 service contract during the period of probation.

16 A certified copy of any laboratory test result may be received in evidence in any
17 proceedings between the Board and Respondent.

18 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
19 administered to himself or herself a prohibited substance, the Board shall order Respondent to
20 cease practice and instruct Respondent to leave any place of work where Respondent is practicing
21 medicine or providing medical services. The Board shall immediately notify all of Respondent's
22 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
23 provide medical services while the cease-practice order is in effect.

24 A biological fluid test will not be considered negative if a positive result is obtained while
25 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
26 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

27 After the issuance of a cease-practice order, the Board shall determine whether the positive
28 biological fluid test is in fact evidence of prohibited substance use by consulting with the

specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

12. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's

1 attendance, and Respondent's level of participation and progress. The facilitator shall report any
2 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
3 or its designee, within twenty-four (24) hours of the unexcused absence.

4 13. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty
5 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or
6 its designee for prior approval as a worksite monitor, the name and qualifications of one or more
7 licensed physician and surgeon, other licensed health care professional if no physician and
8 surgeon is available, or, as approved by the Board or its designee, a person in a position of
9 authority who is capable of monitoring the Respondent at work.

10 The worksite monitor shall not have a current or former financial, personal, or familial
11 relationship with Respondent, or any other relationship that could reasonably be expected to
12 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
13 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite
14 monitor, this requirement may be waived by the Board or its designee, however, under no
15 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

16 The worksite monitor shall have an active unrestricted license with no disciplinary action
17 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
18 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
19 by the Board or its designee.

20 Respondent shall pay all worksite monitoring costs.

21 The worksite monitor shall have face-to-face contact with Respondent in the work
22 environment on as frequent a basis as determined by the Board or its designee, but not less than
23 once per week; interview other staff in the office regarding Respondent's behavior, if requested
24 by the Board or its designee; and review Respondent's work attendance.

25 The worksite monitor shall verbally report any suspected substance abuse to the Board and
26 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
27 substance abuse does not occur during the Board's normal business hours, the verbal report shall
28 be made to the Board or its designee within one (1) hour of the next business day. A written

1 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
2 any other information deemed important by the worksite monitor shall be submitted to the Board
3 or its designee within 48 hours of the occurrence.

4 The worksite monitor shall complete and submit a written report monthly or as directed by
5 the Board or its designee which shall include the following: (1) Respondent's name and
6 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
7 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
8 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
9 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
10 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
11 lead to suspected substance abuse by Respondent. Respondent shall complete any required
12 consent forms and execute agreements with the approved worksite monitor and the Board, or its
13 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

14 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
15 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
16 approval, the name and qualifications of a replacement monitor who will be assuming that
17 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
18 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
19 monitor, Respondent shall receive a notification from the Board or its designee to cease the
20 practice of medicine within three (3) calendar days after being so notified. Respondent shall
21 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
22 responsibility.

23 14. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
24 LICENSEES . Failure to fully comply with any term or condition of probation is a violation of
25 probation.

26 A. If Respondent commits a major violation of probation as defined by section
27 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
28 one or more of the following actions:

1 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
2 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
3 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
4 order issued by the Board or its designee shall state that Respondent must test negative for at least
5 a month of continuous biological fluid testing before being allowed to resume practice. For
6 purposes of determining the length of time a Respondent must test negative while undergoing
7 continuous biological fluid testing following issuance of a cease-practice order, a month is
8 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until
9 notified in writing by the Board or its designee that he or she may do so.

10 (2) Increase the frequency of biological fluid testing.

11 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
12 other action as determined by the Board or its designee.

13 B. If Respondent commits a minor violation of probation as defined by section
14 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
15 one or more of the following actions:

16 (1) Issue a cease-practice order;

17 (2) Order practice limitations;

18 (3) Order or increase supervision of Respondent;

19 (4) Order increased documentation;

20 (5) Issue a citation and fine, or a warning letter;

21 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
22 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
23 Regulations, at Respondent's expense;

24 (7) Take any other action as determined by the Board or its designee.

25 C. Nothing in this Decision shall be considered a limitation on the Board's authority
26 to revoke Respondent's probation if he or she has violated any term or condition of probation. If
27 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
28 opportunity to be heard, may revoke probation and carry out the disciplinary order that was

1 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
2 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
3 is final, and the period of probation shall be extended until the matter is final.

4 15. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
5 Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief
6 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
7 extended to Respondent, at any other facility where Respondent engages in the practice of
8 medicine, including all physician and locum tenens registries or other similar agencies, and to the
9 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
10 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
11 15 calendar days.

12 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

13 16. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
14 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
15 advanced practice nurses.

16 17. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
17 governing the practice of medicine in California and remain in full compliance with any court
18 ordered criminal probation, payments, and other orders.

19 18. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
20 under penalty of perjury on forms provided by the Board, stating whether there has been
21 compliance with all the conditions of probation.

22 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
23 of the preceding quarter.

24 19. GENERAL PROBATION REQUIREMENTS.

25 Compliance with Probation Unit

26 Respondent shall comply with the Board's probation unit.

27 Address Changes

28 Respondent shall, at all times, keep the Board informed of Respondent's business and

1 residence addresses, email address (if available), and telephone number. Changes of such
2 addresses shall be immediately communicated in writing to the Board or its designee. Under no
3 circumstances shall a post office box serve as an address of record, except as allowed by Business
4 and Professions Code section 2021(b).

5 Place of Practice

6 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
7 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
8 facility.

9 License Renewal

10 Respondent shall maintain a current and renewed California physician's and surgeon's
11 license.

12 Travel or Residence Outside California

13 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
14 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
15 (30) calendar days.

16 In the event Respondent should leave the State of California to reside or to practice
17 ,Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
18 departure and return.

19 20. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
20 available in person upon request for interviews either at Respondent's place of business or at the
21 probation unit office, with or without prior notice throughout the term of probation.

22 21. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
23 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
24 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
25 defined as any period of time Respondent is not practicing medicine as defined in Business and
26 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
27 patient care, clinical activity or teaching, or other activity as approved by the Board. If
28 Respondent resides in California and is considered to be in non-practice, Respondent shall

1 comply with all terms and conditions of probation. All time spent in an intensive training
2 program which has been approved by the Board or its designee shall not be considered non-
3 practice and does not relieve Respondent from complying with all the terms and conditions of
4 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
5 on probation with the medical licensing authority of that state or jurisdiction shall not be
6 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
7 period of non-practice.

8 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
9 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
10 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
11 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
12 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

13 Respondent's period of non-practice while on probation shall not exceed two (2) years.

14 Periods of non-practice will not apply to the reduction of the probationary term.

15 Periods of non-practice for a Respondent residing outside of California will relieve
16 Respondent of the responsibility to comply with the probationary terms and conditions with the
17 exception of this condition and the following terms and conditions of probation: Obey All Laws;
18 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
19 Controlled Substances; and Biological Fluid Testing..

20 22. COMPLETION OF PROBATION. Respondent shall comply with all financial
21 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
22 completion of probation. Upon successful completion of probation, Respondent's certificate shall
23 be fully restored.

24 23. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
25 of probation is a violation of probation. If Respondent violates probation in any respect, the
26 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
27 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
28 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have

1 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
2 the matter is final.

3 24. LICENSE SURRENDER. Following the effective date of this Decision, if
4 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
5 the terms and conditions of probation, Respondent may request to surrender his or her license.
6 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
7 determining whether or not to grant the request, or to take any other action deemed appropriate
8 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
9 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
10 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
11 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
12 application shall be treated as a petition for reinstatement of a revoked certificate.

13 25. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
14 with probation monitoring each and every year of probation, as designated by the Board, which
15 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
16 California and delivered to the Board or its designee no later than January 31 of each calendar
17 year.

18 ACCEPTANCE

19 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
20 discussed it with my attorney, Mark Connely. I understand the stipulation and the effect it will
21 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
22 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
23 Decision and Order of the Medical Board of California.

24
25 DATED: 11/16/18

Richard Alan Berg MD
26 RICHARD ALAN BERG, M.D.
27 Respondent
28

1 I have read and fully discussed with Respondent Richard Alan Berg, M.D. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: 11/16/18

Mark Connely
6 Mark Connely
7 Attorney for Respondent

8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Medical Board of California.

11 Dated:

Respectfully submitted,

12 XAVIER BECERRA
13 Attorney General of California
14 MATTHEW M. DAVIS
15 Supervising Deputy Attorney General

16 STEVE DIEHL
17 Deputy Attorney General
18 Attorneys for Complainant
19

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1 I have read and fully discussed with Respondent Richard Alan Berg, M.D. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: _____

6 Mark Connely
7 *Attorney for Respondent*


8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Medical Board of California.

11 Dated: 11/16/18

Respectfully submitted,

12
13 XAVIER BECERRA
14 Attorney General of California
15 MATTHEW M. DAVIS
16 Supervising Deputy Attorney General

17 
18 STEVE DIEHL
19 Deputy Attorney General
20 *Attorneys for Complainant*

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Exhibit A

First Amended Accusation No. 800-2014-010483

1. XAVIER BECERRA
Attorney General of California
2. MATTHEW M. DAVIS
Supervising Deputy Attorney General
3. STEVE DIEHL
Deputy Attorney General
4. State Bar No. 235250
California Department of Justice
5. 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
6. Telephone: (559) 477-1626
Facsimile: (559) 445-5106
7. Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 22 2018
BY D. Richards ANALYST

10. BEFORE THE
11. MEDICAL BOARD OF CALIFORNIA
12. DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

13. In the Matter of the First Amended Accusation
14. Against:

15. **RICHARD ALAN BERG, M.D.**
16. 5882 Birkdale Ln.
San Luis Obispo, CA 93401

17. Physician's and Surgeon's Certificate
No. G 53552,

18. Respondent.

Case No. 800-2014-010483

FIRST AMENDED ACCUSATION

20. Complainant alleges:

21. **PARTIES**

22. 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation solely in
23. her official capacity as the Executive Director of the Medical Board of California.

24. 2. On or about September 10, 1984, the Medical Board issued Physician's and
25. Surgeon's Certificate Number G 53552 to Richard Alan Berg, M.D. (Respondent). The
26. Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
27. charges brought herein and will expire on April 30, 2020, unless renewed.

28. \\\

JURISDICTION

3. This First Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 820 of the Code states:

“Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.”

5. Section 822 of the Code states:

“If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

“(a) Revoking the licentiate's certificate or license.

“(b) Suspending the licentiate's right to practice.

“(c) Placing the licentiate on probation.

“(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

“The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.”

6. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default

1 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
2 action with the board, may, in accordance with the provisions of this chapter:

3 “(1) Have his or her license revoked upon order of the board.

4 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
5 order of the board.

6 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
7 order of the board.

8 “(4) Be publicly reprimanded by the board. The public reprimand may include a
9 requirement that the licensee complete relevant educational courses approved by the board.

10 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
11 the board or an administrative law judge may deem proper.

12 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
13 review or advisory conferences, professional competency examinations, continuing education
14 activities, and cost reimbursement associated therewith that are agreed to with the board and
15 successfully completed by the licensee, or other matters made confidential or privileged by
16 existing law, is deemed public, and shall be made available to the public by the board pursuant to
17 Section 803.1.”

18 7. Section 2234 of the Code, states:

19 “The board shall take action against any licensee who is charged with unprofessional
20 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
21 limited to, the following:

22 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
23 violation of, or conspiring to violate any provision of this chapter.

24 “(b) Gross negligence.

25 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
26 omissions. An initial negligent act or omission followed by a separate and distinct departure from
27 the applicable standard of care shall constitute repeated negligent acts.

28 \\\

1 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate
2 for that negligent diagnosis of the patient shall constitute a single negligent act.

3 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
4 constitutes the negligent act described in paragraph (1), including, but not limited to, a
5 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
6 applicable standard of care, each departure constitutes a separate and distinct breach of the
7 standard of care.

8 “(d) Incompetence.

9 “(e) The commission of any act involving dishonesty or corruption which is substantially
10 related to the qualifications, functions, or duties of a physician and surgeon.

11 “(f) Any action or conduct which would have warranted the denial of a certificate.

12 “(g) The practice of medicine from this state into another state or country without meeting
13 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
14 apply to this subdivision. This subdivision shall become operative upon the implementation of the
15 proposed registration program described in Section 2052.5.

16 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
17 participate in an interview by the board. This subdivision shall only apply to a certificate holder
18 who is the subject of an investigation by the board.”

19 8. Section 2239 of the Code states:

20 “(a) The use or prescribing for or administering to himself or herself, of any controlled
21 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
22 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
23 any other person or to the public, or to the extent that such use impairs the ability of the licensee
24 to practice medicine safely or more than one misdemeanor or any felony involving the use,
25 consumption, or self-administration of any of the substances referred to in this section, or any
26 combination thereof, constitutes unprofessional conduct. The record of the conviction is
27 conclusive evidence of such unprofessional conduct.

28 \\

1 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
2 deemed to be a conviction within the meaning of this section. The Medical Board may order
3 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
4 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
5 affirmed on appeal or when an order granting probation is made suspending imposition of
6 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
7 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
8 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
9 indictment.”

10 9. Section 2266 of the Code states:

11 “The failure of a physician and surgeon to maintain adequate and accurate records relating
12 to the provision of services to their patients constitutes unprofessional conduct.”

13 **FIRST CAUSE FOR ACTION**

14 **(Impairment)**

15 10. Respondent Richard Alan Berg, M.D. is subject to action under section 822 in that he
16 suffers from a mental condition or physical condition affecting competency which impairs his
17 ability to practice medicine safely. The circumstances are as follows:

18 11. On or about January 27, 2017, Respondent submitted to a mental examination by a
19 Board-appointed psychiatrist. During this examination, Respondent refused to discuss his
20 prescribing and recordkeeping practices. Respondent admitted to an opiate addiction, and stated
21 that he became opiate free in December 2015, but relapsed in June 2016. Respondent stated that
22 he had been treated for addiction in December 2015, but had not seen his addiction specialist
23 “much lately.” The examiner concluded that Respondent has opioid use disorder, which is a
24 condition that “could impact his ability to practice medicine safely.” The examiner recommended
25 that Respondent be monitored “in the form of regular random biological fluid testing and ongoing
26 treatment (AA, NA, regular consultations with an addiction specialist) of his substance use in
27 order to practice medicine safely.”

28 \\

12. On or about February 2, 2017, Respondent submitted to a physical evaluation by a Board-appointed specialist in internal medicine. While providing a history to the examiner, Respondent stated that he sees an addiction specialist, who injected Vivitrol (naltrexone, a medication used in the management of alcohol dependence and opioid dependence) "three months ago." Respondent stated that he was supposed to receive this injection once per month, but had not. Respondent did not explain the failure to receive the monthly Vivitrol injection. Respondent stated that he was being treated for opiate addiction. Respondent stated that he was scheduled to receive another injection "next week." The examiner noted that, among other medications, Respondent appeared to be receiving phentermine prescriptions. Respondent refused to discuss the reason that he was taking phentermine. Phentermine is a stimulant that is contraindicated in patients with a history of substance abuse. Respondent refused to provide the examiner with a urine sample. The examiner opined that Respondent is "at high risk for relapse" of his opiate addiction, and suspected phentermine abuse. The examiner opined that Respondent must "demonstrate abstention from substance of abuse such as opiates and stimulants" before he could be considered safe to practice medicine. Additionally, the examiner opined that Respondent "would need to have ongoing monitoring at least monthly, with urine drug screens, to ensure that he remains fit to practice medicine safely."

13. On or about April 8, 2018, the Board-appointed psychiatrist submitted a supplementary report based on his review of Respondent's personal medical and psychiatric records, the transcript of an investigative interview Respondent gave on or about February 2, 2018, and other information. The examiner noted that, on or about March 4, 2016, Respondent admitted that his drug use had impacted his medical practice, causing him to misdiagnose a patient. The examiner noted that Respondent had been prescribed buprenorphine to treat his addiction, but that Respondent had taken the medication inconsistently between February 2017 and April 2018. The examiner noted that Respondent had submitted to urine testing infrequently, and that the urine collection had not been under observation. The examiner noted that, on or about May 19, 2017, Respondent admitted to having falsified a urine screen. The examiner concluded that, in addition to his previous diagnosis of opioid use disorder, Respondent also has

1 stimulant (phentermine) use disorder. The examiner stated that "[Respondent]'s abstinence from
2 drug use appears very tenuous. He appears to be at high risk for relapse."

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Dishonesty)**

5 14. Respondent Richard Alan Berg, M.D. is subject to disciplinary action under section
6 2234, subdivision (e), in that he engaged in acts involving dishonesty or corruption, which were
7 substantially related to the qualifications, functions, or duties of a physician and surgeon. The
8 circumstances are set forth in paragraphs 11-13, above. Additional circumstances are as follows:

9 15. Beginning in or about 2010, Respondent used his friends to obtain phentermine for
10 his own recreational use. Respondent called prescriptions in to local pharmacies ostensibly on
11 behalf of his friends, which his friends would fill and then provide the medication to Respondent,
12 or that Respondent would fill himself. Between September 12, 2014, and November 3, 2016,
13 Respondent prescribed phentermine to at least two of his friends in this manner, for the sole
14 purpose of diverting that medication for his own recreational use. Respondent obtained
15 phentermine in this manner on at least 37 separate occasions during this period, with each filled
16 prescription containing 30 tabs of 37.5mg strength phentermine. Phentermine is a Schedule IV
17 controlled substance.

18 16. Additionally, on six occasions between September 25, 2014, and February 17, 2015,
19 Respondent obtained phentermine by obtaining scripts for himself, written in another physician's
20 name, without that physician's knowledge.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unsafe Use of Controlled Substances)**

23 17. Respondent Richard Alan Berg, M.D. is subject to disciplinary action under section
24 2239 in that he prescribed and administered controlled substances to himself, and/or used
25 controlled substances to the extent, or in such a manner as to be dangerous or injurious to himself,
26 or to any other person or to the public, or to the extent that such use impaired his ability to
27 practice medicine safely. The circumstances are set forth in paragraphs 11-16, above, which are
28 incorporated here by reference as if fully set forth.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 18. Respondent Richard Alan Berg, M.D. is subject to disciplinary action under section
4 2234, subdivision (b), in that he engaged in acts amounting to gross negligence. The
5 circumstances are as follows:

6 19. Between 2013 and 2016, Respondent repeatedly prescribed the sedative zolpidem to
7 at least three family members, and repeatedly prescribed the benzodiazepine diazepam to at least
8 three friends. Additionally, during this period, Respondent prescribed hydrocodone to a friend,
9 promethazine to another friend, and phentermine to a third friend. Respondent failed to maintain
10 any medical records with respect to any of these prescriptions, and failed to coordinate care with
11 any of these patients' physicians. These failures constitute gross negligence.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Repeated Negligent Acts)**

14 20. Respondent Richard Alan Berg, M.D. is subject to disciplinary action under section
15 2234, subdivision (c), in that he engaged in repeated acts of negligence. The circumstances are
16 set forth in paragraph 19, above, which is incorporated here by reference as if fully set forth.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Recordkeeping)**

19 21. Respondent Richard Alan Berg, M.D. is subject to disciplinary action under section
20 2266, in that he failed to keep adequate records. The circumstances are set forth in paragraph 19,
21 above, which is incorporated here by reference as if fully set forth.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Medical Board of California issue a decision:

25 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 53552, issued
26 to Richard Alan Berg, M.D.;

27 \\\

28 \\\

2. Revoking, suspending or denying approval of Richard Alan Berg, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and to supervise advanced practice nurses;

3. Ordering Richard Alan Berg, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: May 22, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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